

1. **Parties.** This is a contract for personal services (the "Agreement"), between the State of Vermont, Department of Vermont Health Access (hereafter called "State"), and Verscend Technologies, Inc. on behalf of itself and its subsidiaries and affiliates, with a principal place of business in Massachusetts (hereafter called "Contractor"). The Contractor's form of business organization is a Corporation. The Contractor's local address is 201 Jones Rd 4th Floor, Waltham MA. It is the Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number.
2. **Subject Matter.** The subject matter of this Agreement is services generally on the subject of Healthcare Effectiveness Data and Information Set measures. Detailed services and software license provisions to be provided by the Contractor are described in Attachment A.
3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay the Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$190,527.00
4. **Agreement Term.** This agreement has an effective date that is an earlier date than the date on which it is signed by the parties. The effective date of this agreement shall be December 13, 2016. All terms and conditions described in this agreement shall apply to any and all services performed for or on behalf of the State. The Contractor agrees that by submitting invoices, bills, or otherwise seeking compensation for services performed prior to the finalization of this agreement or signing of this agreement, Contractor is agreeing to and reaffirming the application of all terms of this amended and restated agreement to that period and to that work. Contractor further agrees to defend, indemnify, and hold the State harmless for any claim, dispute, non-contractual cost or charge, or any liability whatsoever, whether in law, equity, or otherwise, which arises from or is connected to the work performed prior to the execution of this amended and restated agreement. Contractor further agrees that these terms apply regardless of whether the work is accepted by the State, and regardless of whether payment is issued by the State to the Contractor for the work in question. The period of Contractor's performance shall begin on December 13, 2016 and end on December 12, 2017. Upon mutual agreement by both parties, this agreement may be renewed for up to two (2) additional one-year terms.
5. **Prior Approvals.** If approval by the Attorney General's Office or the Secretary of Administration is required, (under current law, bulletins, and interpretations), neither this Agreement nor any amendment to it is binding until it has been approved by either or both such persons.

Approval by the Attorney General's Office is required.
Approval by the Secretary of Administration is required.
Approval by the Department of Information and Innovation is required.
6. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this Agreement shall be effective unless reduced to writing, numbered, and signed by the duly authorized representative of the State and Contractor.
7. **Cancellation.** This Agreement may not be cancelled by either party other than for cause or non-appropriation as set forth herein. The State acknowledges and agrees that in the event of cancellation for non-appropriation there will be no refund of prepaid annual fees.
8. **Attachments.** This Agreement consists of 48 pages including the following attachments, which are

**STATE OF VERMONT
CONTRACT FOR PERSONAL SERVICES
VERSCEND TECHNOLOGIES**

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incorporated herein:

Attachment A - Specifications of Work to be Performed

Attachment B - Payment Provisions

Attachment C - Customary State Contract provisions

Attachment D – Information Technology System Implementation Terms and Conditions

Attachment E - Business Associate Agreement

Attachment F - Customary Contract Provisions of the Agency of Human Services

Appendix I – Required Forms

The order of precedence of documents shall be as follows:

- 1). This document
- 2). Attachment D
- 3). Attachment C
- 4). Attachment A
- 5). Attachment B
- 6). Attachment E
- 7). Attachment F
- 8). Appendix I
- 9). Other Attachments (if any)

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS AGREEMENT.

BY THE STATE OF VERMONT:

BY THE CONTRACTOR:

CORY GUSTAFSON, COMMISSIONER DATE
NOB 1 SOUTH, 280 STATE DRIVE
WATERBURY, VT 05671
Cory.Gustafson@vermont.gov
802-241-0246

DAVID MASON DATE
COO
DAVID.MASON@VERSCEND.COM
201 JONES RD, 4TH FLOOR
WALTHAM, MA 02459
781-693-3700

**ATTACHMENT A
SPECIFICATIONS OF WORK TO BE PERFORMED**

I. PURPOSE

This Contract sets forth the terms and conditions under which Contractor agrees to provide to the State with a web-based, Contractor-supported system for Contractor's Quality Intelligence, a suite of software modules (the "Quality Intelligence Suite"), which provide for the analysis of Medicaid data and calculation of Healthcare Effectiveness Data and Information Set ("HEDIS") measures.

Contractor shall make the Quality Intelligence Suite available to the State no later than December 13, 2016. A description of, and the License governing State's use of, the Contractor's Quality Intelligence Suite is set forth in Section XIV to this Attachment A.

On an annual basis for the term of this Contract, the Contractor shall provide information processing, web-based training, support, backup and recovery, technology updates and other professional services as described herein (individually and collectively referred to herein as the "Application Services"), as necessary for the State's productive use of the Quality Intelligence Suite as further set forth in this Contract. In addition, the State may request Contractor to perform Medicaid record retrieval. This Contract specifies the obligations of each party with additional provisions detailed in the attached Attachments and Exhibits.

II. DESIGNATION OF PROJECT COORDINATORS. Each party shall designate in writing one person ("Project Coordinator") who will be the contact person for all implementation issues associated with the performance of this Agreement. Each party may substitute or replace its Project Coordinator at any time upon providing written notice to the other party. Each party shall make its Project Coordinator available for planning sessions, status meetings, telephone consultation, and otherwise as reasonably required to facilitate the implementation of this Agreement.

For the State:

Erin Carmichael
Erin.Carmichael@vermont.gov
802-241-0388

For the Contractor:

Mike Adams
Mike.Adams@Verscendhealth.com
801-871-1117

III. STATEMENT OF WORK

1. HEDIS[®] Reporting

Contractor shall provide the State with access to the Quality Intelligence Suite and the Application Services required to enable the State to perform HEDIS[®] reporting, as further set forth herein. Contractor shall maintain certification for the Quality Intelligence Suite for all certifiable measures.

2. Support of the Quality Intelligence Suite

The Contractor's Standard support hours are 8:00am – 5:00pm Central Time, Monday through Friday. For support outside Standard support hours, specific arrangements for after-hours support must be made by State with the Contractor a minimum of forty-eight (48) hours in advance of the support being conducted. The Contractor will inform State in advance when a specific request for service requires support outside of the standard support hours.

The State may contact Contractor for support services by email or phone:
Email – hedis-support@Verscend.com
Phone – 952.368.9970

3. User Support Services

The Contractor shall make available User Support personnel who shall be available to respond to user interface questions related to the Quality Intelligence Suite.

4. Input Data Format

The Contractor data input specifications (“Input Specifications”) shall be published on the Contractor’s client portal (“Project Site”). The Contractor will provide an initial 90-minute phone meeting with the State to review the Input Specifications and answer questions. Further, a Contractor Data Analyst will be designated to answer questions and provide feedback to the State technical personnel on an on-going basis as needed in order to understand and interpret the Input Specifications.

a. Input Data

- (i) *Correction of State Input Data.* In the event State is unable or requests Contractor to create input data to utilize the Quality Intelligence Suite to process data and produce correct results, State will send its then-current input data (“State-Formatted Input Data”) to the Contractor for analysis and processing. Once analyzed, the Contractor will do one of the following:
 - (1) If the State-Formatted Input Data is determined to be incorrectly formatted for input to the Quality Intelligence Suite, the Contractor will create a client translation process (“State Data Translation”) and translate State-Formatted Input Data (at the Contractor’s standard support rate set out in Attachment B) in order for State-Formatted Input Data to correctly be presented as input to the Quality Intelligence Suite. If data that is required for Quality Intelligence Suite was omitted from State-Formatted Input Data, the State agrees to modify State-Formatted Input Data as requested by the Contractor and send such data to the Contractor as needed. Once the State Data Translation is developed, the Contractor will provide a “plug-in” to its Quality Intelligence Suite, which will incorporate the State Data Translation into the Quality Intelligence Suite for State to use for future HEDIS runs. The State agrees to utilize the State-Formatted Input Data format for future runs of the Quality Intelligence Suite.
 - (2) If the State-Formatted Input Data is determined to be correctly formatted but is not accepted by the Licensed Software, the Contractor will correct the problem at no charge.
 - (3) Any orders that are pended in a “needs information” status for longer than 28 days without response or direction from the State will be automatically cancelled.

5. Audit of Input Data

As part of the Quality Intelligence Suite, the Contractor will provide data audit processes and reports (the “Contractor Data Audit Tool”), which identifies problems and inconsistencies with input data. Further, once the State begins submitting data, the Contractor will designate a Data Analyst to answer questions and provide feedback to the State technical personnel as needed in order to resolve discrepancies in HEDIS output results. If it is determined that the Data Audit Tool failed to identify erroneous input data, then the Contractor shall provide User support necessary to correct the problem. If it is determined that the Contractor Data Audit Tool clearly identified erroneous input data which was overlooked by the State and subsequently used as input, the Contractor will charge for such services as

set forth in Attachment B.

IV. DELIVERABLES AND SCHEDULE

- The following Deliverables Schedule details the support to be provided by Contractor. The deliverable schedule assumes the State's enrolled Medicaid members loaded into the Quality Intelligence Suite are less than 300,000. The number of enrolled Medicaid loaded into the Quality Intelligence Suite members is defined by the data for the number of members loaded into the Quality Intelligence Suite.

Item	<i>Deliverable description</i>	Assigned to	Completion Date
1	Kickoff meeting, Web Portal Set up, Software access	Contractor	Contract execution plus 14 days
2	State Questionnaire completed	State	Contract execution plus 7 days
3	Input File Walkthrough	Contractor	Contract execution plus 14 days
4	Test Admin Data prepared	State	Contract execution plus 21 days
5	Train Quality Reporter via webinar - Viewing	Contractor	Contract execution plus 14 days
6	Annually for the term of this Contract, Test Run completed	Contractor	21 days from the receipt of usable input files
7	Data Analysis - Test	State	Test Run plus 14 days
8	Retest (if necessary)	State	As agreed by the parties
9	Location/Provider cleanup performed	State	Test Run plus 14 days
10	Sample Configuration Completed	State	Late December (annually)
11	Chase Configuration Completed	State	Late December (annually)
12	CAHPS - Files made available	State	Upon request of the State
13	CAHPS Extract Completed	Contractor	7 days from the receipt of usable input files. Input files should be standard or in the same format as test input
14	Production Software Validation	State	Mid-January (annually)
15	Production Input Files Prepared	State	Mid-February (annually)
16	Production Datamart with Sample Pull Available	Contractor	Annually, 7 days from the receipt of usable input files. Input files should be standard or in the same format as test input

Item	<i>Deliverable description</i>	Assigned to	Completion Date
17	Data Analysis - Production	State	Delivery of Production Data plus 14 days
18	Annual Training for Quality Reporter (delivered remotely)	Contractor	Viewing features and managing chart review (July-Nov) Performing Chart Review – (Dec-March)
19	Administrative Refresh Input Prepared	State	Mid-April (annually)
20	Final Datamart Created	Contractor	Annually, 7 days from the receipt of usable input files. Input files should be standard or in the same format as test input
21	Chart Review	State	Early May (annually)
22	IDSS Plan Lock	State	June (annually)
23	IDSS Mark Final	State	June (annually)
24	PLD Submission	State	June(annually)
25	Feedback Meeting	State and Contractor	July(annually)
26	Proactive Run	Contractor	July-Oct(annually)

In person trainings required by the State shall only be delivered by Contractor in Vermont for an additional fee to be agreed by the parties.

2. Change Management

Deliverable completion dates cannot be changed except via this change control process. If a deliverable date is to change, a change control request shall be submitted to State's Project Coordinator for review and consideration. The request should indicate why the change is necessary and what it will cost, as well as the impact on the planned activity dates. Once reviewed and approved, the Project Coordinator must submit the change via appropriate standard State request documentation to the State approval process for additional funding; if additional funding is approved, the changes will take place once reduced to writing and signed by both parties in an amendment to this agreement.

3. Optional HEDIS Medical Record Retrieval and Review (Chart Abstraction) Services

In each Contract year for the terms of this Contract beginning with Effective Date, and then on the anniversary of the Effective Date thereafter, the State, in its sole discretion, may elect for Contractor to perform Medical Record Retrieval and Medical Abstraction services as set forth herein. For the Contract year beginning as of the Effective Date, the State declines to have Contractor perform Medical Record Retrieval and Medical Abstraction services. For future years, the State shall notify the Contractor of its election to conduct Retrieval and Abstraction Services by September 1st of the year prior to the retrieval/abstraction season. States notice shall specify the Request ID volume in the notice, which shall not be less than 1,000 Request IDs.

V. CONTRACTOR RESPONSIBILITIES / DESCRIPTION OF SERVICES:

1. Medical Record Retrieval Services

Upon receipt of the Request File from the State, the Contractor will provide Medical Record Retrieval Services for each Request ID created upon import of the Request File. Retrieval Services will follow the Contractor's patented, proprietary retrieval methodology, which includes:

- a. Providing State's direct employees with unlimited login ID's to access and use the Contractor's Retrieval System during the Term of this Contract;
- b. Conducting necessary data quality assurances on the imported Request File in order to correctly identify Provider information (verifying provider contact data, organizing requests by group ID vs. provider ID, etc.);
- c. Contacting each medical Provider telephonically, by mail, or by fax (as appropriate) to request Medical Records for the appropriate dates of service and sending via fax or mail the medical record request confirmation letter and member pull list;
- d. Conducting necessary follow-up with Providers for the purpose of retrieving Medical Records;
- e. If a Provider indicates it is unwilling to mail, fax, or upload the requested Medical Records to the Contractor, the Contractor will notify the State, and the State will engage its provider relations group to contact the provider and encourage remote retrieval participation. If the Provider is still unwilling to participate in remote retrieval efforts following the State's provider relations engagement, the Contractor shall provide the State with written notice. In no event shall the State pay expenses for on-site retrieval;
- f. Inputting status notes into the "VERSCEND" System to allow the State real-time tracking of each Request;
- g. Allowing for automated email alerts when additional information is needed from the State (i.e., excessive fee approval);
- h. Providing toll-free telephone number(s) for Provider questions and assistance;
- i. Providing a dedicated account manager and account team to ensure smooth transition of work, and accurate, timely work completion;
- j. Holding regularly scheduled conference calls between the State and the Contractor account management and operations teams;
- k. Handling all pre- and post-payments to medical Providers (as necessary);
- l. Any provider/copy service invoice will be forwarded to the State for resolution. The State shall be responsible for the resolutions of these invoices. The Contractor shall not be responsible for any delays or omitted records that result from the States failure to resolve payment;
- m. Processing of all incoming Medical Records, via mail, fax, provider upload portal or other mutually agreed upon electronic means;
- n. Imaging and associating incoming Medical Records to the appropriate Requests;
- o. Verifying that the imaged records meet quality standards related to clarity, and that the record is associated with the correct member. All records will be delivered in the same "as is" condition that the Medical Records are received from the Provider; and
- p. Making all imaged records available for download from the "VERSCEND" Systems or through electronic delivery via secure File Transfer Protocol (FTP).

2. Secure Transmission of Data

The Contractor shall transmit all data to State via a secure FTP site as designated to the Contractor by the State. In the event the secure FTP site is unavailable for any reason, data will be transmitted securely in a mutually agreed upon method.

VI. DEFINITIONS

For purposes of this Section, capitalized terms shall have the following meanings:

- a. "Member" means the person identified by State to the Contractor as receiving health benefits coverage from State.
- b. "Provider" means a provider of healthcare services to a Member.
- c. "Medical Record" means the medical record of the Member in the "as is" condition as provided by the medical Provider.
- d. "Request File" means an electronic data import file including, but not limited to, all of the data elements required for retrieval of Medical Records
- e. "Provider Site Fee" means all pre- and post- payment fees charged by a Provider or copy service for research, copying, mailing, faxing and / or electronic forwarding of Medical Records, and a Contractor handling fee.
- f. "Request" / "Request ID" means the Contractor's system-generated unique identification number that is assigned to each individual line item of Member/Provider/Measure combination imported and created from the Request File given to the Contractor by State, with each Request ID associated to a single Request.
- g. "Standard Project Reports" means previously developed reports that can be provided to the State by the Contractor.
- h. "Verscend System" means the Contractor's secure, web-based medical record retrieval and HEDIS abstraction systems TM which allow for the tracking of Requests, and the viewing, managing and downloading of Medical Records.

VII. ADDITIONAL TERMS:

- a. The base price will include up to 2,500 charts per HEDIS season and will be billed at the rate set forth in Attachment B. Volume over two thousand five hundred (2,500) per year will require a written amendment to this Agreement.
- b. Any request ID orders that are pended in a "needs information" status for longer than 28 days without response or direction from the State will be automatically cancelled.
- c. The Contractor will provide all Medical Record retrieval and Medical Record abstraction services through its standard processes and procedures.
- d. In connection with its provision of the services hereunder, the Contractor may utilize subcontractors approved by the State; the Contractor shall be solely responsible to the State for the quality of the services provided hereunder and no work shall be performed offshore. The Contractor will not utilize its 3rd party subcontractors to ensure records are provided. In the event that a Provider does not have on-site copy service, and utilizes a 3rd party to produce the Medical Record, the Provider will be responsible for any such fees. Further, the State will provide the information the State would like the Contractor to provide on all requests. Any Provider who sends Medical Records to Contractor which requires additional postage, such postage expenses will be returned to the Provider for resolution. The Contractor shall not pay these expenses.
- e. State shall provide any necessary computers, operating systems, and internet connections required for its access to the "VERSCEND" Systems.
- f. State acknowledges that the "VERSCEND" Systems are the sole and exclusive property of the Contractor. State may access the "VERSCEND" Systems solely during the term of this agreement and solely to the extent necessary to exercise its rights under this agreement. The "VERSCEND" Systems may not be used, disclosed, transmitted, transferred, sold, assigned, leased or otherwise disposed of, or made available for access by third parties, or be commercially exploited by or on behalf of the State, its employees or agents.
- g. In the event the State elects to utilize Contractor's Medical Records retrieval services, Contractor's terms for the use of the VERSCEND Systems shall be subject to the terms of this Agreement. Any

Provider/copy service invoice will be forwarded to the State for resolution. The State shall be responsible for the resolutions of these invoices. The Contractor shall not be responsible for any delays or omitted records that result from the State's failure to resolve payment.

- h. During the Medical Record Retrieval process, any post-payment invoice attached to a delivered Medical Record will be returned to the Provider for resolution and notify the State. The State shall advise Provider that this information must be provided to Contractor at no charge..

VIII. STATE RESPONSIBILITIES:

- a. State will provide the Medical Record Request File to the Contractor including all of the information required for Medical Records retrieval by using the portable database creation feature in Quality Reporter.
- b. State will provide a project coordinator contact, if different, for project implementation, data exchange, and day-to-day management of operational issues.
- c. State will provide a memo waiving the Contractor from all Provider SiteFees for services performed under this Agreement.

IX. DELIVERABLES

- a. Description of Deliverables. It is expressly understood that the Contractor is performing a service rather than a delivering a product. The service of Medical Records retrieval is defined as the attempt to retrieve Medical Records with an outcome that results in either: a patient Medical Record, no patient/no record, cancellation of request, duplicate request, or Provider refusal of request. Contractor will provide State imaged copies of all Medical Records received by the Contractor on behalf of State via the "VERSCEND" Systems.
- b. Acceptance of Deliverables
State agrees that all Medical Records received by the Contractor on behalf of the State will be imaged and delivered to the State in the same "as is" condition that the Medical Records are received from the Provider. As such, the Contractor does not make any representation or warranty of any kind regarding completeness, accuracy, defects, or deficiencies of any Medical Record documentation provided by Provider to Contractor.

X. WARRANTY AND DISCLAIMER

NCQA Certification. The Contractor represents and warrants that it has obtained, and will maintain during the term of this Agreement, National Committee for Quality Assurance ("NCQA") certification.

XI. TERM AND TERMINATION

Effect of Termination. Upon any termination of this Agreement, all of the State's rights and licenses granted hereunder to use the Contractor software and/or user manuals, training materials, and other written materials that relate to the Services and that the Contractor normally makes available to its clients ("Documentation") shall immediately terminate.

XII. GENERAL PROVISIONS

- 1. **Notices.** Written notices may be sent by electronic mail except for the following notices, which must be sent by United States Postal Service certified mail, charges prepaid: termination of contract, contract actions, damage claims, breach notifications, or alteration of this paragraph. To the extent that notices are made under this agreement, such notices shall only be effective if committed to writing and sent to the following persons as representatives of the parties:

For Contractor:

Verscend Technologies, Inc.

201 Jones Rd 4th Floor
Waltham, MA 02451
Attn: Legal Dept.
Phone: 801.871.1102

For State:

DVHA Legal Unit
Department of Vermont Health Access
NOB 1 South, 280 State Drive
Waterbury, VT 05671
AHS.DVHALegal@vermont.gov

2. **No Waiver.** The failure of either party hereto to enforce at any time any of the provisions of this Agreement, or the failure to require at any time performance by the other party of any of the provisions of this Agreement, shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the ability of either party to enforce each and every such provision thereafter. The express waiver by either party of any provision, condition or requirement of this Agreement shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement.
3. **Titles and Subtitles.** The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.
4. **Severability.** In the event any section, paragraph, subparagraph, or provision of this Agreement shall be determined to be contrary to governing law or otherwise unenforceable, all remaining portions of this Agreement shall be enforced to the maximum extent permitted by law. That section, paragraph, subparagraph or provision found unenforceable shall first be construed or interpreted, if possible, to render it enforceable and, if that proves impossible, shall be severed and disregarded, with the remainder of this Agreement enforced to the maximum extent permitted by law.
5. **Disputes Resolution.** The parties shall attempt, in good faith, to resolve any dispute, controversy or claim arising under, out of or relating to this Agreement and any subsequent amendments of this Agreement, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. The parties agree to meet to discuss the dispute, controversy or claim within 10 business days of receipt of written request by a party for such a meeting.
6. **Contractor's Corporate Authority and Due Execution.** The Contractor represents that (a) it has the corporate power and authority to execute, deliver, and perform this Agreement and that the execution, delivery, and performance of this Agreement by the Contractor have been duly authorized by all necessary corporate action; and (b) that this Agreement has been duly executed and delivered by the Contractor and constitutes the legal, valid, and binding obligation of the Contractor enforceable against the Contractor in accordance with its terms.
7. **State's Authority and Due Execution.** By execution of this Agreement, State represents that (a) it has the power and authority to execute, deliver, and perform this Agreement and that all required approvals have been obtained; and (b) that this Agreement has been duly executed and delivered by State and constitutes the legal, valid, and binding obligation of State enforceable against State in accordance with its terms.

8. **Counterparts.** This Agreement may be executed in counterparts, duplicate originals or facsimiles, each of which shall be regarded as one and the same instrument, and which shall be the official and governing version in the interpretation of this Agreement.

XIII. QUALITY INTELLIGENCE SOFTWARE LICENSE

1. Quality Intelligence Software Description

a. *Base Application Service Description*

Quality Intelligence is a suite of software modules which provide for the calculation and analysis of Healthcare Effectiveness Data and Information Set ("HEDIS") measures. HEDIS is developed and maintained by the National Committee for Quality Assurance ("NCQA"), a not-for-profit organization committed to assessing, reporting on, and improving the quality of care provided by organized delivery systems. HEDIS® is a registered trademark and HEDIS Software CertificationSM is a service mark of the National Committee for Quality Assurance.

Quality Intelligence consists of:

- (i) Quality Engine ("Quality Engine"), which calculates: HEDIS administrative rates and is 100% certified by the NCQA HEDIS Software CertificationSM program, a systematic sampling module that is also 100% certified under the NCQA Software Certification program; a medical record chase module, which identifies health care providers which are likely to possess the medical records needed for the HEDIS hybrid methodology chart review process; a patient level detail ("PLD") file generator used for submission of Medicare data to NCQA; and other utilities for extraction of demonstration data, NCQA (Interactive Data Submission System ("IDSS") submission file creation, and administrative updates to sample data.
- (ii) Quality Reporter ("Quality Reporter"), which provides HEDIS reports, detailed data drills for analysis, audit, comparative studies, intervention support, medical record review, and other data analysis features.

The Quality Intelligence Suite, including HEDIS databases, the Quality Reporter and the Verscend Engine will be installed and hosted on the Contractor's servers. The Quality Engine component of the Quality Intelligence Suites is not available for access by State. State will have access to Quality Reporter via a secure web-based desktop connection.

- b. ***Additional Measures.*** Quality Reporter will include the Prevention Quality Indicator (PQI) Measures. PQI measure set will include the initial creation and coding of the measures, measure detail and measure summary reports. The State will not require additional custom reporting.
- c. ***Remote Access.*** The Contractor will provide remote access to the Quality Intelligence Suite to ten (10) named users. User connections allocated to third party vendors of the State approved by Contractor ("Permitted Contractors"), will be deducted from the total number of connections allotted to State.
- d. ***Measurement Production Services.*** The Contractor will (i) audit and load State data; (ii) execute measure logic; (iii) perform sampling extractions and chase logic; (iii) execute two (2) production HEDIS runs, one test run, Consumer Assessment of Healthcare Providers and Systems ("CAHPs") extracts if requested by the State, and one proactive (Summer) run. Additional HEDIS runs are available for an additional fee, which will be addressed in an amendment to this Agreement as needed.
- e. The Contractor represents and warrants that it has and will maintain NCQA certification during the term of this agreement.

2. State Responsibilities

- a. State will provide computers and operating systems (Microsoft Windows) for remote access to the Quality Intelligence Suite.
- b. State will provide input data correctly formatted according to the Contractor data input specifications
 - (i) If the State-Formatted Input Data is correctly formatted but the correctly formatted data is not accepted by the software, the Contractor will correct the problem at no charge.
 - (ii) If the State-Formatted Input data is incorrectly formatted, the Contractor will correct the problem at a cost of \$180/hour charged to Data Services.

3. Failure to Provide Data

The State's failure to provide data to the Contractor shall not discharge State's obligation to pay the annual fee.

A status meeting will be conducted regularly. Normally every 2 weeks to track deliverables, answer questions, and discuss any open items.

The Contractor's Web Portal will be used for meeting minutes, open issue tracking, communication, software downloads and training materials.

XIV. QUALITY INTELLIGNECE SOFTWARE LICENSE GRANT

1. Terms

- a. **Grant Terms.** Subject to and conditioned upon State's continued compliance with all the terms and conditions of this License, the Contractor hereby grants to State a personal, nonexclusive, nontransferable license to use the Quality Intelligence Suite during the Term of this contract at State's offices noted in the contract solely in conjunction with the Services and solely for State's internal business purposes. State shall have the right to make one (1) copy of the Quality Intelligence Suite for archival purposes.
- b. **Limitations.** State shall not reverse engineer, reverse assemble, decompile, create derivative works, modify, or otherwise attempt to derive the source code of the Quality Intelligence Suite or, except as expressly set forth in this Agreement, copy, modify, or create derivative works of the Quality Intelligence Suite.
- c. **Ownership.** The Quality Intelligence Suite is licensed, not sold hereunder. The Contractor retains all right, title and interest in and to the Quality Intelligence Suite.

**ATTACHMENT B
PAYMENT PROVISIONS**

The maximum dollar amount payable under this agreement is not intended as any form of a guaranteed amount. The Contractor will be paid for products or services actually performed as specified in Attachment A up to the maximum allowable amount specified in this agreement. State of Vermont payment terms are Net 30 days from date of invoice, payments against this contract will comply with the State's payment terms. The payment schedule for delivered products, or rates for services performed, and any additional reimbursements, are included in this attachment. The following provisions specifying payments are:

1. **Costs.** The total maximum payable under this contract will not exceed \$190,527. The cost associated with the software license and HEDIS Abstraction is \$185,527. The costs associated with Data Services shall not exceed \$5,000. The payment schedule for delivered products, or rates for services performed, and any additional reimbursements, are included in this Attachment. Should the maximum payable amount be reached under this contract, the Contractor shall be under no obligation to perform further services, deliver additional goods, or continue to license any software or products beyond what has already been paid for pursuant to the terms of this Agreement until the parties mutually agree in writing to lift the limit on the total maximum payable. Optional services, as indicated in the table below, may be enacted by the State upon amendment to this agreement to increase the maximum contract amount, but in no event shall these services exceed the cost listed below.

Contractor shall not incur travel expenses in connection with the performance of the services without the State's advance written approval. All travel related expenses shall comply with current State employee reimbursement policies as identified in [Vermont Bulletin 3.4 Reimbursement for Travel related Expenses](#). Mileage reimbursement will be paid in accordance to current rates and formulas established by the State. No benefits or insurance will be reimbursed by the State.

2. Software Pricing Table

<u>Fee Description</u>	<u>Invoice Date</u>	<u>Annual Fee</u>
Quality Intelligence	Annual Fee invoiced upon the start of each contract year.	\$185,527
Quality Intelligence Data Collection		Included at no additional cost
PQI Measure Set		Included at no additional cost
Data Services billed at \$180/hour	As requested by State	\$5,000
	Total	\$190,527

3. Optional Services Pricing Table:

<u>Service</u>	<u>Invoice Date</u>	<u>Per Unit Price</u>
Medical Record Retrieval	If State elects to conduct retrieval in a given year, the State shall be billed monthly in arrears for the	\$23 per Retrieved Request ID

	medical records retrieved	
HEDIS Measure Abstraction	If state elects to conduct abstraction in a given year, the State shall be billed monthly in arrears for the medical records retrieved	\$23 per Abstracted Request ID

3.1 Optional Services Conditions. If the State elects to conduct Retrieval & Abstraction Services, but does not submit the number of Request ID's stated in the State's notice of election to conduct the Services by February 15th the Contractor shall bill State for the full value of the Services as if the work had been completed.

4. Invoices should reference this contract number and be submitted to: Meaghan.Kelley@vermont.gov

**ATTACHMENT C: STANDARD STATE PROVISIONS
FOR CONTRACTS AND GRANTS
REVISED JULY 1, 2016**

1. Definitions: For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. "Agreement" shall mean the specific contract or grant to which this form is attached.

2. Entire Agreement: This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial: This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under the Agreement.

Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

4. Sovereign Immunity: The State reserves all immunities, defenses, rights or actions arising out of the State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State's immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this Agreement.

5. No Employee Benefits For Party: The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

6. Independence: The Party will act in an independent capacity and not as officers or employees of the State.

7. Defense and Indemnity: The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits. In the event the State withholds approval to settle any such claim, then the Party shall proceed with the defense of the claim but under those circumstances, the Party's indemnification obligations shall be limited to the amount of the proposed settlement initially rejected by the State.

After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon

a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

The Party agrees that in no event shall the terms of this Agreement nor any document required by the Party in connection with its performance under this Agreement obligate the State to defend or indemnify the Party or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party except to the extent awarded by a court of competent jurisdiction.

8. Insurance: Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of the Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

General Liability and Property Damage: With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal & Advertising Injury

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

Additional Insured. The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Notice of Cancellation or Change. There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

9. Reliance by the State on Representations: All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with the Contract, including but not limited to bills, invoices, progress reports and other proofs of work.

10. False Claims Act: The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

11. Whistleblower Protections: The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

12. Federal Requirements Pertaining to Grants and Subrecipient Agreements:

A. Requirement to Have a Single Audit: In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, the Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

B. Internal Controls: In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, in accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

C. Mandatory Disclosures: In the case that this Agreement is a Grant funded in whole or in part by Federal funds, in accordance with 2CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

13. Records Available for Audit: The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

14. Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

15. Set Off: The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

16. Taxes Due to the State:

- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

17. Taxation of Purchases: All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

18. Child Support: (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date the Agreement is signed, he/she:

- A. is not under any obligation to pay child support; or
- B. is under such an obligation and is in good standing with respect to that obligation; or
- C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

19. Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 23 ("Certification Regarding Use of State Funds"); Section 31 ("State Facilities"); and Section 32 ("Location of State Data").

20. No Gifts or Gratuities: Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

21. Copies: Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

22. Certification Regarding Debarment: Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

23. Certification Regarding Use of State Funds: In the case that Party is an employer and this Agreement is a State Funded Grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

24. Conflict of Interest: Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

25. Confidentiality: Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

26. Force Majeure: Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly

or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) ("Force Majeure"). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

27. Marketing: Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

28. Termination: In addition to any right of the State to terminate for convenience, the State may terminate this Agreement as follows:

- A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and in the event federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
- B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice.
- C. No Implied Waiver of Remedies:** A party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

29. Continuity of Performance: In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

30. Termination Assistance: Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

31. State Facilities: If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

32. Location of State Data: No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside continental United States, except with the express written permission of the State.

ATTACHMENT D
INFORMATION TECHNOLOGY SYSTEM IMPLEMENTATION
TERMS AND CONDITIONS (rev. 10/1/16)

1. MODIFICATIONS TO CONTRACTOR DOCUMENTS

The parties specifically agree that the Contractor Documents are hereby modified and superseded by Attachment C and this Attachment D.

“Contractor Documents” shall mean one or more document, agreement or other instrument required by Contractor in connection with the performance of the products and services being purchased by the State, regardless of format, including the license agreement, end user license agreement or similar document, any hyperlinks to documents contained in the Contractor Documents, agreement or other instrument and any other paper or “shrinkwrap,” “clickwrap,” “browsewrap” or other electronic version thereof.

2. NO SUBSEQUENT, UNILATERAL MODIFICATION OF TERMS BY CONTRACTOR

Notwithstanding any other provision or other unilateral license terms which may be issued by Contractor during the Term of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of an order for the products and services being purchased by the State, as applicable, the components of which are licensed under the Contractor Documents, or the fact that such other agreement may be affixed to or accompany the products and services being purchased by the State, as applicable, upon delivery, the terms and conditions set forth herein shall supersede and govern licensing and delivery of all products and services hereunder.

3. TERM OF CONTRACTOR’S DOCUMENTS; PAYMENT TERMS

Contractor acknowledges and agrees that, to the extent a Contractor Document provides for alternate term or termination provisions, including automatic renewals, such sections shall be waived and shall have no force and effect. All Contractor Documents shall run concurrently with the term of this Contract. Contractor acknowledges and agrees that, to the extent a Contractor Document provides for payment terms which differ from the payment terms set forth in Attachment B, such sections shall be waived and shall have no force and effect and the terms in Attachment B shall govern.

4. OWNERSHIP AND LICENSE IN DELIVERABLES

A. Contractor Intellectual Property.

As between the parties, and subject to the terms and conditions of this Contract, Contractor and its third-party suppliers will retain ownership of all intellectual property rights in the Quality Intelligence Suite, and any and all derivative works made to the Quality Intelligence Suite or any part thereof, as well as all Work Product provided to the State (“**Contractor Proprietary Technology**”). The State acquires no rights to Contractor Proprietary Technology except for the licensed interests granted under this Contract. The term “**Work Product**” means all other materials, reports, manuals, visual aids, documentation, ideas, concepts, techniques, inventions, processes, or works of authorship developed, provided or created by Contractor or its employees or contractors during the course of performing work for the State (excluding any State Data or derivative works thereof and excluding any output from the Quality Intelligence Suite generated by the State’s use of the Quality Intelligence Suite, including without limitation, reports, graphs, charts and modified State Data, but expressly including any form templates of such reports, graphs or charts by themselves that do not include the State Data).

Title, ownership rights, and all Intellectual Property Rights in and to the Quality Intelligence Suite will remain the sole property of Contractor or its suppliers. The State acknowledges that the source code is not covered by any license hereunder and will not be provided by Contractor. Except as set forth in this Contract, no right or implied license or right of any kind is granted to the State regarding the Quality Intelligence Suite or any part thereof. Nothing in this Contract confers upon either party any right to use the other party's trade names and trademarks, except for permitted license use in accordance with this Contract. All use of such marks by either party will inure to the benefit of the owner of such marks, use of which will be subject to specifications controlled by the owner.

B. State Intellectual Property

The State shall retain all right, title and interest in and to (i) all content and all property, data and information furnished by or on behalf of the State or any agency, commission or board thereof, (ii) all information, that is created under this Contract, including, but not limited to, all data that is generated under this Contract ; and (iii) all State trademarks, trade names, logos and other State identifiers, Internet uniform resource locators, State user name or names, Internet addresses and e-mail addresses obtained or developed pursuant to this Contract (collectively, "**State Intellectual Property**").

Contractor may not collect, access or use State Intellectual Property for any purpose other than as specified in this Contract. Upon expiration or termination of this Contract, Contractor shall return or destroy all State Intellectual Property and all copies thereof, and Contractor shall have no further right or license to such State Intellectual Property.

Contractor acquires no rights or licenses, including, without limitation, intellectual property rights or licenses, to use State Intellectual Property for its own purposes. In no event shall the Contractor claim any security interest in State Intellectual Property.

5. CONFIDENTIALITY AND NON-DISCLOSURE; SECURITY BREACH REPORTING

A. Exclusions. For purposes of this Contract, confidential information will not include information or material which (a) enters the public domain (other than as a result of a breach of this Contract); (b) was in the receiving party's possession prior to its receipt from the disclosing party; (c) is independently developed by the receiving party without the use of confidential information; (d) is obtained by the receiving party from a third party under no obligation of confidentiality to the disclosing party; or (e) is not exempt from disclosure under applicable State law.

B. Confidentiality of Contractor Information. The Contractor acknowledges and agrees that this Contract and any and all Contractor information obtained by the State in connection with this Contract are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq. The State will not disclose information for which a reasonable claim of exemption can be made pursuant to 1 V.S.A. § 317(c), including, but not limited to, trade secrets, proprietary information or financial information, including any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to the Contractor, and which gives the Contractor an opportunity to obtain business advantage over competitors who do not know it or use it.

The State shall immediately notify Contractor of any request made under the Access to Public Records Act, or any request or demand by any court, governmental agency or other person asserting a demand or request for Contractor information. Contractor may, in its discretion, seek an appropriate protective order, or otherwise defend any right it may have to maintain the confidentiality of such information under applicable State law within three business days of the State's receipt of any such request. Contractor agrees that it will not make any claim against the State if the State makes available to the public any information in accordance with the Access to Public Records Act or in response to a binding

order from a court or governmental body or agency compelling its production. Contractor shall indemnify the State for any costs or expenses incurred by the State, including, but not limited to, attorneys' fees awarded in accordance with 1 V.S.A. § 320, in connection with any action brought in connection with Contractor's attempts to prevent or unreasonably delay public disclosure of Contractor's information if a final decision of a court of competent jurisdiction determines that the State improperly withheld such information and that the improper withholding was based on Contractor's attempts to prevent public disclosure of Contractor's information.

The State agrees that (a) it will use the Contractor information only as may be necessary in the course of performing duties, receiving services or exercising rights under this Contract; (b) it will provide at a minimum the same care to avoid disclosure or unauthorized use of Contractor information as it provides to protect its own similar confidential and proprietary information; (c) except as required by the Access to Records Act, it will not disclose such information orally or in writing to any third party unless that third party is subject to a written confidentiality agreement that contains restrictions and safeguards at least as restrictive as those contained in this Contract; (d) it will take all reasonable precautions to protect the Contractor's information; and (e) it will not otherwise appropriate such information to its own use or to the use of any other person or entity.

Contractor may affix an appropriate legend to Contractor information that is provided under this Contract to reflect the Contractor's determination that any such information is a trade secret, proprietary information or financial information at time of delivery or disclosure.

C. Confidentiality of State Information. In performance of this Contract, and any exhibit or schedule hereunder, the Contractor acknowledges that certain State Data (as defined below), to which the Contractor may have access may contain individual federal tax information, personal protected health information and other individually identifiable information protected by State or federal law or otherwise exempt from disclosure under the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq. ("State Data"). In addition to the provisions of this Section, the Contractor shall comply with the requirements set forth in the State's HIPAA Business Associate Agreement attached to this Contract as Attachment E.

State Data shall not be stored, accessed from, or transferred to any location outside the United States.

Unless otherwise instructed by the State, Contractor agrees to keep confidential all State Data. The Contractor agrees that (a) it will use the State Data only as may be necessary in the course of performing duties or exercising rights under this Contract; (b) it will provide at a minimum the same care to avoid disclosure or unauthorized use of State Data as it provides to protect its own similar confidential and proprietary information; (c) it will not publish, reproduce, or otherwise divulge any State Data in whole or in part, in any manner or form orally or in writing to any third party unless it has received written approval from the State and that third party is subject to a written confidentiality agreement that contains restrictions and safeguards at least as restrictive as those contained in this Contract; (d) it will take all reasonable precautions to protect the State's information; and (e) it will not otherwise appropriate such information to its own use or to the use of any other person or entity. Contractor will take reasonable measures as are necessary to restrict access to State Data in the Contractor's possession to only those employees on its staff who must have the information on a "need to know" basis. The Contractor shall not retain any State Data except to the extent required to perform the services under this Contract.

Contractor shall not access State user accounts or State Data, except in the course of data center operations, response to service or technical issues, as required by the express terms of this Contract, or at State's written request.

Contractor may not share State Data with its parent company or other affiliate without State's express written consent; provided, however, Contractor may share State Data with Contractor's wholly owned affiliate Medi-Connect Global, solely for purposes of processing State Data in intellectual property assets owned by such affiliates.

The Contractor shall promptly notify the State of any request or demand by any court, governmental agency or other person asserting a demand or request for State Data to which the Contractor or any third-party hosting service of the Contractor may have access, so that the State may seek an appropriate protective order.

6. SECURITY OF STATE INFORMATION

A. Security Standards. To the extent the Contractor or its subcontractors, affiliates or agents handles, collects, stores, disseminates or otherwise deals with State Data, the Contractor represents and warrants that it has implemented and it shall maintain during the term of this Contract the highest industry standard administrative, technical, and physical safeguards and controls consistent with NIST *Special Publication 800-53* (version 4 or higher) and *Federal Information Processing Standards Publication 200* and designed to (i) ensure the security and confidentiality of State Data; (ii) protect against any anticipated security threats or hazards to the security or integrity of the State Data; and (iii) protect against unauthorized access to or use of State Data. Such measures shall include at a minimum: (1) access controls on information systems, including controls to authenticate and permit access to State Data only to authorized individuals and controls to prevent the Contractor employees from providing State Data to unauthorized individuals who may seek to obtain this information (whether through fraudulent means or otherwise); (2) industry-standard firewall protection; (3) encryption of electronic State Data while in transit from the Contractor networks to external networks; (4) measures to store in a secure fashion all State Data which shall include, but not be limited to, encryption at rest and multiple levels of authentication; (5) dual control procedures, segregation of duties, and pre-employment criminal background checks for employees with responsibilities for or access to State Data; (6) measures to ensure that the State Data shall not be altered or corrupted without the prior written consent of the State; (7) measures to protect against destruction, loss or damage of State Data due to potential environmental hazards, such as fire and water damage; (8) staff training to implement the information security measures; and (9) monitoring of the security of any portions of the Contractor systems that are used in the provision of the services against intrusion on a twenty-four (24) hour a day basis.

B. Security Breach Notice and Reporting. The Contractor shall have policies and procedures in place for the effective management of Security Breaches, as defined below, which shall be made available to the State upon request.

In addition to the requirements set forth in any applicable Business Associate Agreement as may be attached to this Contract, in the event of any actual security breach or reasonable belief of an actual security breach the Contractor either suffers or learns of that either compromises or could compromise State Data (a "Security Breach"), the Contractor shall notify the State within 24 hours of its discovery. Contractor shall promptly determine the nature and extent of the Security Breach, contain the incident by taking appropriate action to prevent any further loss of data, correct weaknesses in physical security and mitigate the effect of the breach. Contractor shall report to the State: (i) the nature of the Security Breach; (ii) the State Data used or disclosed; (iii) what entity made the unauthorized use or received the unauthorized disclosure; (iv) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and (v) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized

use or disclosure. The Contractor shall provide such other information, including a written report, as reasonably requested by the State. Contractor shall analyze and document the incident and provide all notices required by applicable law.

In accordance with Section 9 V.S.A. §2435(b)(3), the Contractor shall notify the Office of the Attorney General, or, if applicable, Vermont Department of Financial Regulation (“DFR”), within fourteen (14) business days of the Contractor’s discovery of the Security Breach. The notice shall provide a preliminary description of the breach. The foregoing notice requirement shall be included in the subcontracts of any of Contractor’s subcontractors, affiliates or agents which may be “data collectors” hereunder.

The Contractor agrees to fully cooperate with the State and assume responsibility at its own expense for the following, to be determined in the sole discretion of the State: (i) notice to affected consumers if the State determines it to be appropriate under the circumstances of any particular Security Breach, in a form recommended by the AGO; and (ii) investigation and remediation associated with a Security Breach, including but not limited to, outside investigation, forensics, counsel, crisis management and credit monitoring, in the sole determination of the State, such determination shall be applied both reasonably and in proportion to the circumstances of the Security Breach.

The Contractor agrees to comply with all applicable laws, as such laws may be amended from time to time (including, but not limited to, Chapter 62 of Title 9 of the Vermont Statutes and all applicable State and federal laws, rules or regulations) that require notification in the event of unauthorized release of personally-identifiable information or other event requiring notification.

C. Security Policies. To the extent the Contractor or its subcontractors, affiliates or agents handles, collects, stores, disseminates or otherwise deals with State Data, the Contractor will have an information security policy that protects its systems and processes and media that may contain State Data from internal and external security threats and State Data from unauthorized disclosure, and will have provided a copy of such policy to the State. The Contractor shall provide the State with not less than thirty (30) days advance written notice of any material amendment or modification of such policies.

D. Operations Security. To the extent the Contractor or its subcontractors, affiliates or agents handles, collects, stores, disseminates or otherwise deals with State Data, the Contractor shall cause an SSAE 16 SOC 2 Type 2 audit report to be conducted annually. The audit results summary and the Contractor’s plan for addressing or resolution of the audit results shall be shared with the State within sixty (60) days of the Contractor's receipt of the audit results.

E. Redundant Back-Up. The Contractor shall maintain a system which allows for daily incremental and full monthly backup data which is stored geographically separated from its main data center that. The Contractor’s back-up policies shall be made available to the State upon request. The Contractor shall provide the State with not less than thirty (30) days advance written notice of any material amendment or modification of such policies.

F. Vulnerability Testing. The Contractor shall run quarterly vulnerability assessments and promptly report results to the State. Contractor shall remediate all critical issues within 90 days, all medium issues within 120 days and low issues within 180 days. Contractor shall obtain written State approval for any exceptions. Once remediation is complete, Contractor shall re-perform the test.

7. CONTRACTOR’S REPRESENTATIONS AND WARRANTIES

A. General Representations and Warranties. The Contractor represents, warrants and covenants that:

- (i) The Contractor has all requisite power and authority to execute, deliver and perform its obligations under this Contract and the execution, delivery and performance of this Contract by the Contractor has been duly authorized by the Contractor.
- (ii) There is no outstanding litigation, arbitrated matter or other dispute to which the Contractor is a party which, if decided unfavorably to the Contractor, would reasonably be expected to have a material adverse effect on the Contractor's ability to fulfill its obligations under this Contract.
- (iii) The Contractor will comply with all laws applicable to its performance of the services and otherwise to the Contractor in connection with its obligations under this Contract.
- (iv) The Contractor has adequate resources to fulfill its obligations under this Contract.
- (v) Neither Contractor nor Contractor's subcontractors has past state or federal violations, convictions or suspensions relating to miscoding of employees in NCCI job codes for purposes of differentiating between independent contractors and employees.

B. Contractor's Performance Warranties. Contractor represents and warrants to the State that:

- (i) All Deliverables, if unmodified by and properly used by State, will be free from material errors and shall perform in accordance with the features detailed in the Contractor's most current software documentation and will perform in substantial compliance with the descriptions set forth in Attachment A for a period of at least one year.
- (ii) Excepting scheduled downtime of which the State receives notice, Contractor will provide to the State commercially reasonable continuous and uninterrupted access to the Service, and will not interfere with the State's access to and use of the Service during the term of this Contract;
- (iii) The Service is compatible with and will operate successfully with any environment (including web browser and operating system) specified by the Contractor in its documentation;
- (iv) Each and all of the services shall be performed in a timely, diligent, professional and skillful manner, in accordance with professional or technical standards applicable to such services, by qualified persons with the technical skills, training and experience to perform such services in the planned environment.
- (v) All Deliverables supplied by the Contractor to the State shall be transferred free and clear of any and all liens, claims, mortgages, security interests, liabilities and encumbrances or any kind.
- (vi) Any time software is delivered to the State, whether delivered via electronic media or the internet, no portion of such software or the media upon which it is stored or delivered will have any type of software routine or other element which is designed to facilitate unauthorized access to or intrusion upon; or unrequested disabling or erasure of; or unauthorized interference with the operation of any hardware, software, data or peripheral equipment of or utilized by the State. Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any software delivered hereunder, Contractor will, upon State's request, provide a new or clean install of the software. Notwithstanding the foregoing, Contractor assumes no responsibility for the State's negligence or failure to protect data from viruses, or any unintended modification, destruction or disclosure.

- (vii) To the extent Contractor resells commercial hardware or software it purchased from a third party, Contractor will, to the extent it is legally able to do so, pass through any such third party warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will not relieve the Contractor from Contractor's warranty obligations set forth herein.

C. Disclaimer. THE APPLICATION SERVICES AND THE QUALITY INTELLIGENCE SUITE IS PROVIDED WITHOUT IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

D. Effect of Breach of Warranty. If, at any time during the term of this Contract, software or the results of Contractor's work fail to perform according to any warranty of Contractor under this Contract, the State shall promptly notify Contractor in writing of such alleged nonconformance, and Contractor shall, at its own expense and without limiting any other rights or remedies of the State hereunder, re-perform or replace any services that are materially in breach. Alternatively, with State consent, the Contractor may refund of all amounts paid by State for the nonconforming portion of the deliverable or service.

E. Limited Programs Warranty. EXCEPT AS EXPRESSLY AGREED HEREIN, THE CONTRACTOR DOES NOT WARRANT (I) THAT THE QUALITY INTELLIGENCE SUITE WILL MEET STATE'S REQUIREMENTS; (II) THAT THE QUALITY INTELLIGENCE SUITE WILL OPERATE IN COMBINATION WITH OTHER SOFTWARE OR HARDWARE WHICH MAY BE SELECTED FOR USE BY STATE; OR (III) THAT THE OPERATION OF THE QUALITY INTELLIGENCE SUITE WILL BE UNINTERRUPTED OR ERROR-FREE.

8. PROFESSIONAL LIABILITY AND CYBER LIABILITY INSURANCE COVERAGE

In addition to the insurance required in Attachment C to this Contract, before commencing work on this Contract and throughout the term of this Contract, Contractor agrees to procure and maintain (a) Errors and Omissions policy which covers cyber liability for any and all services performed under this Contract, with minimum third party coverage of \$3 Million per claim, \$ 5 Million in aggregate.

Before commencing work on this Contract the Contractor must provide certificates of insurance to show that the foregoing minimum coverages are in effect.

9. LIMITATION OF LIABILITY.

IN NO EVENT WILL THE CONTRACTOR'S LIABILITY FOR ANY DAMAGES TO THE STATE, INCLUDING DAMAGES ARISING FROM INDEMNITY OBLIGATIONS EVER EXCEED \$5,000,000. LIMITS OF LIABILITY FOR STATE CLAIMS SHALL NOT APPLY TO STATE CLAIMS ARISING OUT OF: (A) CONTRACTOR'S GROSS NEGLIGENCE, FRAUD OR INTENTIONAL MISCONDUCT; OR (B) VIOLATIONS OF THE STATE OF VERMONT FRAUDULENT CLAIMS ACT. IN NO EVENT SHALL THIS LIMIT OF LIABILITY BE CONSTRUED TO LIMIT CONTRACTOR'S LIABILITY FOR THIRD PARTY CLAIMS DIRECTLY AGAINST THE CONTRACTOR WHICH MAY ARISE OUT OF CONTRACTOR'S ACTS OR OMISSIONS IN THE PERFORMANCE OF THIS CONTRACT.

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL OR SPECIAL DAMAGES, DAMAGES, OR DAMAGES WHICH ARE NOT PROXIMATELY CAUSED BY A PARTY, SUCH AS LOSS OF ANTICIPATED BUSINESS, OR LOST PROFITS, INCOME, GOODWILL, OR REVENUE IN CONNECTION WITH OR ARISING OUT OF THE SUBJECT MATTER OF THIS CONTRACT.

The provisions of this Section shall apply notwithstanding any other provisions of this Contract or any other agreement.

10. CONTINUITY OF PERFORMANCE

In the event of a dispute between the Contractor and the State, each party will continue to perform its obligations under this Contract during the resolution of such dispute unless and until this Contract is terminated in accordance with its terms.

11. REMEDIES FOR DEFAULT; NO WAIVER OF REMEDIES

In the event either party is in default under this Contract, the non-defaulting party may, at its option, pursue any or all of the remedies available to it under this Contract, including termination for cause, and at law or in equity.

No delay or failure to exercise any right, power or remedy accruing to either party upon breach or default by the other under this Contract shall impair any such right, power or remedy, or shall be construed as a waiver of any such right, power or remedy, nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing.

12. NO ASSUMPTION OF COSTS

Any requirement that the State defend or indemnify Contractor or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or license verification costs of Contractor, is hereby deleted from the Contractor Documents.

13. TERMINATION

Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to the State all State information, State Intellectual Property or State Data (including without limitation any Deliverables for which State has made payment in whole or in part) ("State Materials"), that are in the possession or under the control of Contractor in whatever stage of development and form of recordation such State property is expressed or embodied at that time.

In the event the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the Contractor shall immediately return all State Materials to State control; including, but not limited to, making all necessary access to applicable remote systems available to the State for purposes of downloading all State Materials.

Contractor shall reasonably cooperate with other parties in connection with all services to be delivered under this Contract, including without limitation any successor provider to whom State Materials are to be transferred in connection with termination. Contractor shall assist the State in exporting and extracting the State Materials, in a format usable without the use of the Services and as agreed to by State, at no additional cost. Notwithstanding the foregoing, under no circumstances will the Contractor be required to disclose or make available to the State or any third party any confidential or proprietary information of the Contractor.

Any transition services requested by State involving additional knowledge transfer and support may be subject to a contract amendment for a fixed fee or at rates to be mutually agreed upon by the parties.

If the State determines in its sole discretion that a documented transition plan is necessary, then no later than sixty (60) days prior to termination, Contractor and the State shall mutually prepare a Transition Plan identifying transition services to be provided.

15. ACCESS TO STATE DATA:

Contractor shall provide any requested State Materials upon the State's request at any time during the term of this Contract and for up to thirty (30) days after the Term or so long as the State Materials remain in the Contractor's possession, at no additional cost so long as it is provided in a format usable without the Service and in a format provided by the State or in the format utilized by the contractor, as the State may determine.

The Contractor must allow the State access to information such as system logs and latency statistics that affect its State Materials and or processes.

The Contractor's policies regarding the retrieval of data upon the termination of services have been made available to the State upon execution of this Contract under separate cover. The Contractor shall provide the State with not less than thirty (30) days advance written notice of any material amendment or modification of such policies.

16. AUDIT RIGHTS

Contractor will maintain and cause its permitted contractors to maintain a complete audit trail of all transactions and activities, financial and non-financial, in connection with this Contract. With reasonable advance notice, Contractor will provide to the State, its internal or external auditors, inspectors, regulators and other designated representatives, at reasonable times (and in the case of State or federal regulators, at any time required by such regulators) access to Contractor representatives and to any and all Contractor facilities where the required information, data and records are maintained, for the purpose of performing audits and inspections of Contractor and/or any or all of the records, data and information applicable to this Contract.

At a minimum, such audits, inspections and access shall be conducted to the extent permitted or required by any laws applicable to the State or Contractor (or such higher or more rigorous standards, if any, as State or Contractor applies to its own similar businesses, operations or activities), to (i) verify the accuracy of charges and invoices; (ii) verify the integrity of State Data (iii) examine and verify Contractor's and/or its permitted contractors' operations and security procedures and controls; (iv) inspect and verify Contractor's and/or its permitted contractors' disaster recovery planning and testing, business resumption and continuity planning and testing, contingency arrangements and insurance coverage; and (v) examine Contractor's and/or its permitted contractors' performance of the Services including audits of: (1) practices and procedures; (2) general controls and physical and data/information security practices and procedures; (3) quality initiatives and quality assurance, (4) contingency and continuity planning, disaster recovery and back-up procedures for processes, resources and data; (5) compliance with the terms of this Contract and applicable laws. Contractor shall provide and cause its permitted contractors to provide full cooperation to such auditors, inspectors, regulators and representatives in connection with audit functions and with regard to examinations by regulatory authorities.

17. DESTRUCTION OF STATE DATA

At any time during the term of this Contract within (i) thirty days of the State's written request or (ii) thirty (30) days after the Term or so long as the State Materials remain in the Contractor's possession,, and in any event after the State has had an opportunity to export and recover the State Materials, Contractor shall at its own expense securely destroy and erase from all systems it directly or indirectly uses or controls all tangible or intangible forms of the State Materials, in whole or in part, and all copies thereof except, backup copies which may be retained for 6 months, and such records as are required by law. The destruction of State Data and State Intellectual Property shall be performed according to National Institute of Standards and Technology (NIST) approved methods. Contractor shall certify in writing to the State that such State Data has been disposed of securely. To the extent that any applicable law prevents Contractor from destroying or erasing State Materials as set forth herein, Contractor shall retain, in its then current state, all such State Materials then within its right

of control or possession in accordance with the confidentiality, security and other requirements of this Contract, and perform its obligations under this section as soon as such law no longer prevents it from doing so.

Further, upon the relocation of State Data, Contractor shall securely dispose of such copies from the former data location and certify in writing to the State that such State Data has been disposed of securely. Contractor shall comply with all reasonable directions provided by the State with respect to the disposal of State Data.

18 CONTRACTOR BANKRUPTCY.

Contractor acknowledges that if Contractor, as a debtor in possession, or a trustee in bankruptcy in a case under Section 365(n) of Title 11, United States Code (the "Bankruptcy Code"), rejects this Contract, the State may elect to retain its rights under this Contract as provided in Section 365(n) of the Bankruptcy Code. Upon written request of the State to Contractor or the Bankruptcy Trustee, Contractor or such Bankruptcy Trustee shall not interfere with the rights of the State as provided in this Contract, including the right to obtain the State Intellectual Property.

19 SOFTWARE LICENSEE COMPLIANCE REPORT.

In lieu of any requirement that may be in a Contractor Document that the State provide the Contractor with access to its System for the purpose of determining State compliance with the terms of the Contractor Document, upon request and not more frequently than annually, the State will provide Contractor with a certified report concerning the State's use of any software licensed for State use pursuant this Contract. The parties agree that any non-compliance indicated by the report shall not constitute infringement of the licensor's intellectual property rights, and that settlement payment mutually agreeable to the parties shall be the exclusive remedy for any such non-compliance.

20. CONTRACTOR INTELLECTUAL PROPERTY INDEMNITY.

Contractor shall, at its own expense, defend State and its officers and employees against any Claims, and indemnify and hold harmless State for any Losses incurred by the State arising out of any Third Party claim alleging that any of the Deliverables or the use of such Deliverables as authorized hereunder infringes or violates a U.S. patent or copyright.

The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

Should any Deliverables become the subject of such a claim, Contractor shall, at its option and expense, (a) procure for State the right to make continued use thereof, (b) replace or modify the Deliverable so that it becomes non-infringing, or (c) if such remedies are not reasonably available, request the return of the infringing Deliverable and grant State a pro-rated credit for the infringing Deliverable. To the extent replacement or modification is the chosen remedy, Contractor's obligation will include, but not be limited to, (i) costs to uninstall software or plug-ins or other components State used, if any; (b) installation costs or implementation fees for any new software or plug-ins or other necessary components that will allow State to access or utilize the Deliverable, if any; (c) training or knowledge transfer costs for State; and (d) any data transfer costs, if any.

Contractor shall have no liability if the alleged infringement is based on (1) combination with Third Party products if the alleged infringement relates solely to such combination, (2) modifications by parties other than Contractor (or persons or entities employed or contracted by Contractor) if the alleged infringement solely relates directly to such modification, unless such modification was approved by Contractor, (3) use for a purpose or in a manner for which the Deliverable was not designed, or (4) use of any older version of the Deliverable when use of a newer version that have been made available to State would have avoided the infringement. THIS SECTION STATES STATE'S SOLE AND EXCLUSIVE REMEDY AND CONTRACTOR'S ENTIRE LIABILITY FOR INFRINGEMENT CLAIMS.

21. MODIFICATIONS OF ATTACHMENT C

A. Section 7 of Attachment C is hereby deleted in its entirety and replaced as follows:

Defense and Indemnity: The Party shall defend the State and its officers and employees against all third-party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits. In the event the State withholds approval to settle any such claim, then the Party shall proceed with the defense of the claim but under those circumstances, the Party's indemnification obligations shall be limited to the amount of the proposed settlement initially rejected by the State.

After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon

a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any negligent act or omission or intentional misconduct of the Party or an agent of the Party in connection with the performance of this Agreement.

The Party agrees that in no event shall the terms of this Agreement nor any document required by the Party in connection with its performance under this Agreement obligate the State to defend or indemnify the Party or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party except to the extent awarded by a court of competent jurisdiction.

Losses Causes by State. Contractor will not be liable for any negligent acts or omissions or intentional misconduct of the State, its officers, employees or agents.

B. Notwithstanding Section 8 of Attachment C, the following is hereby deleted from the agreement:

Additional Insured. The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance

C. Notwithstanding Section 30 of Attachment C, the following is hereby deleted from this Agreement All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

D. Notwithstanding Section 15 of Attachment E, Section 15.1 is hereby deleted and replaced with the following:

15.1 Business Associate in connection with the expiration or termination of the contract or grant shall return or destroy, at the discretion of the Covered Entity, all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity pursuant to this contract or grant that Business Associate still maintains in any form or medium (including electronic) within thirty (30) days after such expiration or termination. Business Associate shall not retain any copies of the PHI excepting backup tape which shall be destroyed within 6 months of termination. Business Associate shall certify in writing for Covered Entity (1) when all PHI has been returned or destroyed and (2) that Business Associate does not continue to maintain any PHI excepting that on backup tape. Business Associate is to provide this certification during this thirty (30) day period.

E. Notwithstanding Section 17 of Attachment E, Section 8.2 is hereby deleted and replaced with the following:

8.2 If if there is an impermissible acquisition, access, use or disclosure of PHI by a Subcontractor of Business Associate constitutes a Breach as defined in 45 CFR § 164.402, and if requested by Covered Entity or Business Associate, Subcontractor shall provide notice to the individual(s) whose PHI has been the subject of the Breach. When Covered Entity requests that Business Associate or its

Subcontractor provide notice, Business Associate shall either 1) consult with Covered Entity about the specifics of the notice as set forth in section 8.1, above, or 2) require, by contract, its Subcontractor to consult with Covered Entity about the specifics of the notice as set forth in section 8.1

F. Notwithstanding Section 17 of Attachment E, Section 17.4 is hereby deleted and replaced with the following:

Business Associate shall implement policies and procedures to comply with 45 CFR sections 164.306, 164.308, 164.310 and 163.312, and document the policies and procedures as required by 45 CFR section 164.316.

G. Notwithstanding Section 9 of Attachment F, the following section is hereby deleted and replaced:

Security and Data Transfers: Party shall comply with all applicable State and Agency of Human Services' policies and standards, especially those related to privacy and security. Current State security policies can be found here: <http://dii.vermont.gov/policy/policy> and Agency of Human Services State policies can be found here: <http://humanservices.vermont.gov/policy-legislation>. The State will advise the Party of any new policies, procedures, or protocols developed during the term of this agreement as they are issued and will work with the Party to implement any required.

Party will ensure the physical and data security associated with computer equipment, including desktops, notebooks, and other portable devices, used in connection with this Agreement. Party will also assure that any media or mechanism used to store or transfer data to or from the State includes industry standard security mechanisms such as continually up-to-date malware protection and encryption. Party will make every reasonable effort to ensure media or data files transferred to the State are virus and spyware free. At the conclusion of this agreement and after successful delivery of the data to the State, Party shall securely delete data (including archival backups, except tape backups which will be deleted within 6 months of termination) from Party's equipment that contains individually identifiable records, in accordance with standards adopted by the Agency of Human Services.

Party, in the event of a data breach, shall comply with the terms of Section 6 above.

H. Notwithstanding Section 9 of Attachment F, the following section is hereby deleted

Intellectual Property/Work Product Ownership: All data, technical information, materials first gathered, originated, developed, prepared, or obtained as a condition of this agreement and used in the performance of this agreement -- including, but not limited to all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and printouts, notes and memoranda, written procedures and documents, which are prepared for or obtained specifically for this agreement, or are a result of the services required under this grant -- shall be considered "work for hire" and remain the property of the State of Vermont, regardless of the state of completion unless otherwise specified in this agreement. Such items shall be delivered to the State of Vermont upon 30-days notice by the State. With respect to software computer programs and / or source codes first developed for the State, all the work shall be considered

"work for hire," i.e., the State, not the Party (or subcontractor or sub-grantee), shall have full and complete ownership of all software computer programs, documentation and/or source codes developed.

Party shall not sell or copyright a work product or item produced under this agreement without explicit permission from the State of Vermont.

If Party is operating a system or application on behalf of the State of Vermont, Party shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without prior authorization by the State. Nothing herein shall entitle the State to pre-existing Party's materials.

Party acknowledges and agrees that should this agreement be in support of the State's implementation of the Patient Protection and Affordable Care Act of 2010, Party is subject to the certain property rights provisions of the Code of Federal Regulations and a Grant from the Department of Health and Human Services, Centers for Medicare & Medicaid Services. Such agreement will be subject to, and incorporates here by reference, 45 CFR 74.36, 45 CFR 92.34 and 45 CFR 95.617 governing rights to intangible property

**ATTACHMENT E
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement ("Agreement") is entered into by and between the State of Vermont Agency of Human Services, operating by and through its **Department of Vermont Health Access** ("Covered Entity") and **Verscend Technologies, Inc.** ("Business Associate") as of December 13, 2016 ("Effective Date"). This Agreement supplements and is made a part of the contract/grant to which it is attached.

Covered Entity and Business Associate enter into this Agreement to comply with standards promulgated under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), including the Standards for the Privacy of Individually Identifiable Health Information, at 45 CFR Parts 160 and 164 ("Privacy Rule"), and the Security Standards, at 45 CFR Parts 160 and 164 ("Security Rule"), as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH), and any associated federal rules and regulations.

The parties agree as follows:

1. Definitions. All capitalized terms used but not otherwise defined in this Agreement have the meanings set forth in 45 CFR Parts 160 and 164 as amended by HITECH and associated federal rules and regulations.

"Agent" means those person(s) who are agents(s) of the Business Associate, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c).

"Breach" means the acquisition, access, use or disclosure of protected health information (PHI) which compromises the security or privacy of the PHI, except as excluded in the definition of Breach in 45 CFR § 164.402.

"Business Associate shall have the meaning given in 45 CFR § 160.103.

"Individual" includes a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

"Protected Health Information" or PHI shall have the meaning given in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Agency.

"Security Incident" means any the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

"Services" includes all work performed by the Business Associate for or on behalf of Covered Entity that requires the use and/or disclosure of protected health information to perform a business associate function described in 45 CFR § 160.103 under the definition of Business Associate.

"Subcontractor" means a person or organization to whom a Business Associate delegates a function, activity or service, other than in the capacity of a member of the workforce of the Business Associate. For purposes of this Agreement, the term Subcontractor includes Subgrantees.

2. Identification and Disclosure of Privacy and Security Offices. Business Associate shall provide, within ten (10) days of the execution of this agreement, written notice to the Covered Entity's contract/grant manager the names and contact information of both the HIPAA Privacy Officer and HIPAA Security Officer. This information must be updated any time either of these contacts changes.

3. Permitted and Required Uses/Disclosures of PHI.

3.1 Except as limited in this Agreement, Business Associate may use or disclose PHI to perform Services, as specified in the underlying grant or contract with Covered Entity. The uses and disclosures of Business Associate are limited to the minimum necessary, to complete the tasks or to provide the services associated with the terms of the underlying agreement. Business Associate shall not use or disclose PHI in any manner that would constitute a violation of the Privacy Rule if used or disclosed by Covered Entity in that manner. Business Associate may not use or disclose PHI other than as permitted or required by this Agreement or as Required by Law.

3.2 Business Associate may make PHI available to its employees who need access to perform Services provided that Business Associate makes such employees aware of the use and disclosure restrictions in this Agreement and binds them to comply with such restrictions. Business Associate may only disclose PHI for the purposes authorized by this Agreement: (a) to its agents and Subcontractors in accordance with Sections 9 and 17 or, (b) as otherwise permitted by Section 3.

3.3 Business Associate shall be directly liable under HIPAA for impermissible uses and disclosures of PHI that Business Associate handles on behalf of Covered Entity, and for impermissible uses and disclosures, by Business Associate's Subcontractor(s), of the PHI that Business Associate handles on behalf of Covered Entity and that it passes on to Subcontractors.

4. Business Activities. Business Associate may use PHI received in its capacity as a Business Associate to Covered Entity if necessary for Business Associate's proper management and administration or to carry out its legal responsibilities. Business Associate may disclose PHI received in its capacity as Business Associate to Covered Entity for Business Associate's proper management and administration or to carry out its legal responsibilities if a disclosure is Required by Law or if Business Associate obtains reasonable written assurances via a written agreement from the person to whom the information is to be disclosed that the PHI shall remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the Agreement requires the person or entity to notify Business Associate, within two (2) business days (who in turn will notify Covered Entity within two (2) business days after receiving notice of a Breach as specified in Section 6.1), in writing of any Breach of Unsecured PHI of which it is aware. Uses and disclosures of PHI for the purposes identified in Section 3 must be of the minimum amount of PHI necessary to accomplish such purposes.

5. Safeguards. Business Associate, its Agent(s) and Subcontractor(s) shall implement and use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Agreement. With respect to any PHI that is maintained in or transmitted by electronic media, Business Associate or its Subcontractor(s) shall comply with 45 CFR sections 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards) and 164.316 (policies and procedures and documentation requirements). Business Associate or its Agent(s) and Subcontractor(s) shall identify in writing upon request from Covered Entity all of the safeguards that it uses to prevent impermissible uses or disclosures of PHI.

6. Documenting and Reporting Breaches.

6.1 Business Associate shall report to Covered Entity any Breach of Unsecured PHI, including Breaches reported to it by a Subcontractor, as soon as it (or any of its employees or agents) becomes aware of any such Breach, and in no case later than five (5) business days after it (or any of its

employees or agents) becomes aware of the Breach, except when a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security.

6.2 In the event of a Breach Business Associate shall provide Covered Entity with the names of the individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of the Breach and any other available information that is required to be given to the affected individuals, as set forth in 45 CFR § 164.404(c), and, if requested by Covered Entity, information necessary for Covered Entity to investigate the impermissible use or disclosure. Business Associate shall continue to provide to Covered Entity information concerning the Breach as it becomes available to it. Business Associate shall require its Subcontractor(s) to agree to these same terms and conditions.

6.3 When Business Associate determines that an impermissible acquisition, use or disclosure of PHI by a member of its workforce is not a Breach, as that term is defined in 45 CFR § 164.402, and therefore does not necessitate notice to the impacted individual(s), it shall document its assessment of risk, conducted as set forth in 45 CFR § 402(2). When requested by Covered Entity, Business Associate shall make its risk assessments available to Covered Entity. It shall also provide Covered Entity with 1) the name of the person(s) making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons supporting the determination of low probability that the PHI had been compromised. When a breach is the responsibility of a member of its Subcontractor's workforce, Business Associate shall either 1) conduct its own risk assessment and draft a summary of the event and assessment or 2) require its Subcontractor to conduct the assessment and draft a summary of the event. In either case, Business Associate shall make these assessments and reports available to Covered Entity.

6.4 Business Associate shall require, by contract, a Subcontractor to report to Business Associate and Covered Entity any Breach of which the Subcontractor becomes aware, no later than two (2) business days after becomes aware of the Breach.

7. **Mitigation and Corrective Action.** Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to it of an impermissible use or disclosure of PHI, even if the impermissible use or disclosure does not constitute a Breach. Business Associate shall draft and carry out a plan of corrective action to address any incident of impermissible use or disclosure of PHI. If requested by Covered Entity, Business Associate shall make its mitigation and corrective action plans available to Covered Entity. Business Associate shall require a Subcontractor to agree to these same terms and conditions.

8. **Providing Notice of Breaches.**

8.1 If Covered Entity determines that an impermissible acquisition, access, use or disclosure of PHI for which one of Business Associate's employees or agents was responsible constitutes a Breach as defined in 45 CFR § 164.402, and if requested by Covered Entity, Business Associate shall provide notice to the individual(s) whose PHI has been the subject of the Breach. When requested to provide notice, Business Associate shall consult with Covered Entity about the timeliness, content and method of notice, and shall receive Covered Entity's approval concerning these elements. The cost of notice and related remedies shall be borne by Business Associate.

8.2 If Covered Entity or Business Associate determines that an impermissible acquisition, access, use or disclosure of PHI by a Subcontractor of Business Associate constitutes a Breach as defined in 45 CFR § 164.402, and if requested by Covered Entity or Business Associate, Subcontractor shall provide notice to the individual(s) whose PHI has been the subject of the Breach. When Covered Entity requests that Business Associate or its Subcontractor provide notice, Business Associate shall either 1) consult with Covered Entity

about the specifics of the notice as set forth in section 8.1, above, or 2) require, by contract, its Subcontractor to consult with Covered Entity about the specifics of the notice as set forth in section 8.1

8.3 The notice to affected individuals shall be provided as soon as reasonably possible and in no case later than 60 calendar days after Business Associate reported the Breach to Covered Entity.

8.4 The notice to affected individuals shall be written in plain language and shall include, to the extent possible, 1) a brief description of what happened, 2) a description of the types of Unsecured PHI that were involved in the Breach, 3) any steps individuals can take to protect themselves from potential harm resulting from the Breach, 4) a brief description of what the Business Associate is doing to investigate the Breach, to mitigate harm to individuals and to protect against further Breaches, and 5) contact procedures for individuals to ask questions or obtain additional information, as set forth in 45 CFR § 164.404(c).

8.5 Business Associate shall notify individuals of Breaches as specified in 45 CFR § 164.404(d) (methods of individual notice). In addition, when a Breach involves more than 500 residents of Vermont, Business Associate shall, if requested by Covered Entity, notify prominent media outlets serving Vermont, following the requirements set forth in 45 CFR § 164.406.

9. Agreements with Subcontractors. Business Associate shall enter into a Business Associate Agreement with any Subcontractor to whom it provides PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity in which the Subcontractor agrees to the same restrictions and conditions no less restrictive that apply through this Agreement to Business Associate with respect to such PHI. Business Associate must enter into this Business Associate Agreement before any use by or disclosure of PHI to such agent. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the use or disclosure of PHI. Business Associate shall provide a copy of the Business Associate Agreement it enters into with a subcontractor to Covered Entity upon request. Business associate may not make any disclosure of PHI to any Subcontractor without prior written consent of Covered Entity.

10. Access to PHI. Business Associate shall provide access to PHI in a Designated Record Set to Covered Entity or as directed by Covered Entity to an Individual to meet the requirements under 45 CFR § 164.524. Business Associate shall provide such access in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any request for access to PHI that Business Associate directly receives from an Individual.

11. Amendment of PHI. Business Associate shall make any amendments to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR § 164.526, whether at the request of Covered Entity or an Individual. Business Associate shall make such amendments in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any request for amendment to PHI that Business Associate directly receives from an Individual.

12. Accounting of Disclosures. Business Associate shall document disclosures of PHI and all information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Business Associate shall provide such information to Covered Entity or as directed by Covered Entity to an Individual, to permit Covered Entity to respond to an accounting request. Business Associate shall provide such information in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to

Covered Entity for handling any accounting request that Business Associate directly receives from an Individual.

13. Books and Records. Subject to the attorney-client and other applicable legal privileges, Business Associate shall make its internal practices, books, and records (including policies and procedures and PHI) relating to the use and disclosure of PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity available to the Secretary in the time and manner designated by the Secretary. Business Associate shall make the same information available to Covered Entity, upon Covered Entity's request, in the time and manner reasonably designated by Covered Entity so that Covered Entity may determine whether Business Associate is in compliance with this Agreement.

14. Termination.

14.1 This Agreement commences on the Effective Date and shall remain in effect until terminated or until all of the PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity subject to Section 18.8.

14.2 If Business Associate breaches any material term of this Agreement, Covered Entity may either: (a) provide an opportunity for Business Associate to cure the breach and Covered Entity may terminate the contract or grant without liability or penalty if Business Associate does not cure the breach within the time specified by Covered Entity; or (b) immediately terminate the contract or grant without liability or penalty if Covered Entity believes that cure is not reasonably possible; or (c) if neither termination nor cure are feasible, Covered Entity shall report the breach to the Secretary. Covered Entity has the right to seek to cure any breach by Business Associate and this right, regardless of whether Covered Entity cures such breach, does not lessen any right or remedy available to Covered Entity at law, in equity, or under the contract or grant, nor does it lessen Business Associate's responsibility for such breach or its duty to cure such breach.

15. Return/Destruction of PHI.

15.1 Business Associate in connection with the expiration or termination of the contract or grant shall return or destroy, at the discretion of the Covered Entity, all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity pursuant to this contract or grant that Business Associate still maintains in any form or medium (including electronic) within thirty (30) days after such expiration or termination. Business Associate shall not retain any copies of the PHI. Business Associate shall certify in writing for Covered Entity (1) when all PHI has been returned or destroyed and (2) that Business Associate does not continue to maintain any PHI. Business Associate is to provide this certification during this thirty (30) day period.

15.2 Business Associate shall provide to Covered Entity notification of any conditions that Business Associate believes make the return or destruction of PHI infeasible. If Covered Entity agrees that return or destruction is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible for so long as Business Associate maintains such PHI. This shall also apply to all Agents and Subcontractors of Business Associate.

16. Penalties and Training. Both Parties understand that: (a) there may be civil or criminal penalties for misuse or misappropriation of PHI and (b) violations of this Agreement may result in notification to law enforcement officials and regulatory, accreditation, and licensure organizations. If requested by Covered

Entity, Business Associate shall participate in training regarding the use, confidentiality, and security of PHI.

17. Security Rule Obligations. The following provisions of this section apply to the extent that Business Associate creates, receives, maintains or transmits Electronic PHI on behalf of Covered Entity.

17.1 Business Associate shall implement and use administrative, physical, and technical safeguards in compliance with 45 CFR sections 164.308, 164.310, and 164.312 with respect to the Electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate shall identify in writing upon request from Covered Entity all of the safeguards that it uses to protect such Electronic PHI.

17.2 Business Associate shall ensure that any Agent and Subcontractor to whom it provides Electronic PHI agrees in a written agreement to implement and use administrative, physical, and technical safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of the Electronic PHI. Business Associate must enter into this written agreement before any use or disclosure of Electronic PHI by such Agent or Subcontractor. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the use or disclosure of Electronic PHI. Business Associate shall provide a copy of the written agreement to Covered Entity upon request. Business Associate may not make any disclosure of Electronic PHI to any Agent or Subcontractor without the prior written consent of Covered Entity.

17.3 Business Associate shall report in writing to Covered Entity any Security Incident pertaining to such Electronic PHI (whether involving Business Associate or an Agent or Subcontractor). Business Associate shall provide this written report as soon as it becomes aware of any such Security Incident, and in no case later than five (5) business days after it becomes aware of the incident. Business Associate shall provide Covered Entity with the information necessary for Covered Entity to investigate any such Security Incident.

17.4 Business Associate shall comply with any reasonable policies and procedures Covered Entity implements to obtain compliance under the Security Rule.

18. Miscellaneous.

18.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the contract/grant, the terms of this Agreement shall govern with respect to its subject matter. Otherwise, the terms of the contract/grant continue in effect.

18.2 Business Associate shall cooperate with Covered Entity to amend this Agreement from time to time as is necessary for Covered Entity to comply with the Privacy Rule, the Security Rule, or any other standards promulgated under HIPAA.

18.3 Any ambiguity in this Agreement shall be resolved to permit the parties to comply with the Privacy Rule, Security Rule, or any other standards promulgated under HIPAA.

18.4 In addition to applicable Vermont law, the parties shall rely on applicable federal law (e.g., HIPAA, the Privacy Rule and Security Rule, and the HIPAA omnibus final rule) in construing the meaning and effect of this Agreement.

18.5 As between Business Associate and Covered Entity, Covered Entity owns all PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity.

18.6 Business Associate shall abide by the terms and conditions of this Agreement with respect to all PHI it receives from Covered Entity or creates or receives on behalf of Covered Entity even if some of that information relates to specific services for which Business Associate may not be a "Business Associate" of Covered Entity under the Privacy Rule.

18.7 Business Associate is prohibited from directly or indirectly receiving any remuneration in exchange for an individual's PHI. Business Associate will refrain from marketing activities that would violate HIPAA, including specifically Section 13406 of the HITECH Act. Reports or data containing the PHI may not be sold without Agency's or the affected individual's written consent.

18.8 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement. For example: (a) the provisions of this Agreement shall continue to apply if Covered Entity determines that it would be infeasible for Business Associate to return or destroy PHI as provided in Section 14.2 and (b) the obligation of Business Associate to provide an accounting of disclosures as set forth in Section 11 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.

(Rev: 5/5/15)

ATTACHMENT F

AGENCY OF HUMAN SERVICES' CUSTOMARY CONTRACT PROVISIONS

1. **Definitions:** For purposes of this Attachment F, the term "Agreement" shall mean the form of the contract or grant, with all of its parts, into which this Attachment F is incorporated. The meaning of the term "Party" when used in this Attachment F shall mean any named party to this Agreement *other than* the State of Vermont, the Agency of Human Services (AHS) and any of the departments, boards, offices and business units named in this Agreement. As such, the term "Party" shall mean, when used in this Attachment F, the Contractor or Grantee with whom the State of Vermont is executing this Agreement. If Party, when permitted to do so under this Agreement, seeks by way of any subcontract, sub-grant or other form of provider agreement to employ any other person or entity to perform any of the obligations of Party under this Agreement, Party shall be obligated to ensure that all terms of this Attachment F are followed. As such, the term "Party" as used herein shall also be construed as applicable to, and describing the obligations of, any subcontractor, sub-recipient or sub-grantee of this Agreement. Any such use or construction of the term "Party" shall not, however, give any subcontractor, sub-recipient or sub-grantee any substantive right in this Agreement without an express written agreement to that effect by the State of Vermont.
2. **Agency of Human Services:** The Agency of Human Services is responsible for overseeing all contracts and grants entered by any of its departments, boards, offices and business units, however denominated. The Agency of Human Services, through the business office of the Office of the Secretary, and through its Field Services Directors, will share with any named AHS-associated party to this Agreement oversight, monitoring and enforcement responsibilities. Party agrees to cooperate with both the named AHS-associated party to this contract and with the Agency of Human Services itself with respect to the resolution of any issues relating to the performance and interpretation of this Agreement, payment matters and legal compliance.
3. **Medicaid Program Parties** (*applicable to any Party providing services and supports paid for under Vermont's Medicaid program and Vermont's Global Commitment to Health Waiver*):

Inspection and Retention of Records: In addition to any other requirement under this Agreement or at law, Party must fulfill all state and federal legal requirements, and will comply with all requests appropriate to enable the Agency of Human Services, the U.S. Department of Health and Human Services (along with its Inspector General and the Centers for Medicare and Medicaid Services), the Comptroller General, the Government Accounting Office, or any of their designees: (i) to evaluate through inspection or other means the quality, appropriateness, and timeliness of services performed under this Agreement; and (ii) to inspect and audit any records, financial data, contracts, computer or other electronic systems of Party relating to the performance of services under Vermont's Medicaid program and Vermont's Global Commitment to Health Waiver. Party will retain for ten years all documents required to be retained pursuant to 42 CFR 438.3(u).

Subcontracting for Medicaid Services: Notwithstanding any permitted subcontracting of services to be performed under this Agreement, Party shall remain responsible for ensuring that this Agreement is fully performed according to its terms, that subcontractor remains in compliance with the terms hereof, and that subcontractor complies with all state and federal laws and regulations relating to the Medicaid program in Vermont. Subcontracts, and any service provider agreements entered into by Party in connection with the performance of this Agreement, must clearly specify in writing the responsibilities of the subcontractor or other service provider and Party must retain the authority to revoke its subcontract or service provider agreement or to impose other sanctions if the performance of the subcontractor or service provider is inadequate or if its performance deviates from any requirement of this Agreement. Party shall make available on request all contracts, subcontracts and service provider agreements between the Party,

subcontractors and other service providers to the Agency of Human Services and any of its departments as well as to the Center for Medicare and Medicaid Services.

Medicaid Notification of Termination Requirements: Party shall follow the Department of Vermont Health Access Managed-Care-Organization enrollee-notification requirements, to include the requirement that Party provide timely notice of any termination of its practice.

Encounter Data: Party shall provide encounter data to the Agency of Human Services and/or its departments and ensure further that the data and services provided can be linked to and supported by enrollee eligibility files maintained by the State.

Federal Medicaid System Security Requirements Compliance: Party shall provide a security plan, risk assessment, and security controls review document within three months of the start date of this Agreement (and update it annually thereafter) in order to support audit compliance with 45 CFR 95.621 subpart F, *ADP System Security Requirements and Review Process*.

4. Workplace Violence Prevention and Crisis Response *(applicable to any Party and any subcontractors and sub-grantees whose employees or other service providers deliver social or mental health services directly to individual recipients of such services):*

Party shall establish a written workplace violence prevention and crisis response policy meeting the requirements of Act 109 (2016), 33 VSA §8201(b), for the benefit of employees delivering direct social or mental health services. Party shall, in preparing its policy, consult with the guidelines promulgated by the U.S. Occupational Safety and Health Administration for *Preventing Workplace Violence for Healthcare and Social Services Workers*, as those guidelines may from time to time be amended.

Party, through its violence protection and crisis response committee, shall evaluate the efficacy of its policy, and update the policy as appropriate, at least annually. The policy and any written evaluations thereof shall be provided to employees delivering direct social or mental health services.

Party will ensure that any subcontractor and sub-grantee who hires employees (or contracts with service providers) who deliver social or mental health services directly to individual recipients of such services, complies with all requirements of this Section.

5. Non-Discrimination:

Party shall not discriminate, and will prohibit its employees, agents, subcontractors, sub-grantees and other service providers from discrimination, on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under Title IX of the Education Amendments of 1972, and on the basis of race, color or national origin under Title VI of the Civil Rights Act of 1964. Party shall not refuse, withhold from or deny to any person the benefit of services, facilities, goods, privileges, advantages, or benefits of public accommodation on the basis of disability, race, creed, color, national origin, marital status, sex, sexual orientation or gender identity as provided by Title 9 V.S.A. Chapter 139.

No person shall on the grounds of religion or on the grounds of sex (including, on the grounds that a woman is pregnant), be excluded from participation in, be denied the benefits of, or be subjected to discrimination, to include sexual harassment, under any program or activity supported by State of Vermont and/or federal funds.

Party further shall comply with the non-discrimination requirements of Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d, et seq., and with the federal guidelines promulgated pursuant to Executive Order 13166 of 2000, requiring that contractors and subcontractors receiving federal funds assure that persons with limited English proficiency can meaningfully access services. To the extent Party provides assistance to individuals with limited English proficiency through the use of oral or written translation or interpretive services, such individuals cannot be required to pay for such services.

6. Employees and Independent Contractors:

Party agrees that it shall comply with the laws of the State of Vermont with respect to the appropriate classification of its workers and service providers as “employees” and “independent contractors” for all purposes, to include for purposes related to unemployment compensation insurance and workers compensation coverage, and proper payment and reporting of wages. Party agrees to ensure that all of its subcontractors or sub-grantees also remain in legal compliance as to the appropriate classification of “workers” and “independent contractors” relating to unemployment compensation insurance and workers compensation coverage, and proper payment and reporting of wages. Party will on request provide to the Agency of Human Services information pertaining to the classification of its employees to include the basis for the classification. Failure to comply with these obligations may result in termination of this Agreement.

7. Data Protection and Privacy:

Protected Health Information: Party shall maintain the privacy and security of all individually identifiable health information acquired by or provided to it as a part of the performance of this Agreement. Party shall follow federal and state law relating to privacy and security of individually identifiable health information as applicable, including the Health Insurance Portability and Accountability Act (HIPAA) and its federal regulations.

Substance Abuse Treatment Information: Substance abuse treatment information shall be maintained in compliance with 42 C.F.R. Part 2 if the Party or subcontractor(s) are Part 2 covered programs, or if substance abuse treatment information is received from a Part 2 covered program by the Party or subcontractor(s).

Protection of Personal Information: Party agrees to comply with all applicable state and federal statutes to assure protection and security of personal information, or of any personally identifiable information (PII), including the Security Breach Notice Act, 9 V.S.A. § 2435, the Social Security Number Protection Act, 9 V.S.A. § 2440, the Document Safe Destruction Act, 9 V.S.A. § 2445 and 45 CFR 155.260. As used here, PII shall include any information, in any medium, including electronic, which can be used to distinguish or trace an individual’s identity, such as his/her name, social security number, biometric records, etc., either alone or when combined with any other personal or identifiable information that is linked or linkable to a specific person, such as date and place of birth, mother’s maiden name, etc.

Other Confidential Consumer Information: Party agrees to comply with the requirements of AHS Rule No. 08-048 concerning access to and uses of personal information relating to any beneficiary or recipient of goods, services or other forms of support. Party further agrees to comply with any applicable Vermont State Statute and other regulations respecting the right to individual privacy. Party shall ensure that all of its employees, subcontractors and other service providers performing services under this agreement understand and preserve the sensitive, confidential and non-public nature of information to which they may have access.

Data Breaches: Party shall report to AHS, through its Chief Information Officer (CIO), any impermissible use or disclosure that compromises the security, confidentiality or privacy of any form of protected personal

information identified above within 24 hours of the discovery of the breach. Party shall in addition comply with any other data breach notification requirements required under federal or state law.

8. Abuse and Neglect of Children and Vulnerable Adults:

Abuse Registry. Party agrees not to employ any individual, to use any volunteer or other service provider, or to otherwise provide reimbursement to any individual who in the performance of services connected with this agreement provides care, custody, treatment, transportation, or supervision to children or to vulnerable adults if there has been a substantiation of abuse or neglect or exploitation involving that individual. Party is responsible for confirming as to each individual having such contact with children or vulnerable adults the non-existence of a substantiated allegation of abuse, neglect or exploitation by verifying that fact through (a) as to vulnerable adults, the Adult Abuse Registry maintained by the Department of Disabilities, Aging and Independent Living and (b) as to children, the Central Child Protection Registry (unless the Party holds a valid child care license or registration from the Division of Child Development, Department for Children and Families). See 33 V.S.A. §4919(a)(3) and 33 V.S.A. §6911(c)(3).

Reporting of Abuse, Neglect, or Exploitation. Consistent with provisions of 33 V.S.A. §4913(a) and §6903, Party and any of its agents or employees who, in the performance of services connected with this agreement, (a) is a caregiver or has any other contact with clients and (b) has reasonable cause to believe that a child or vulnerable adult has been abused or neglected as defined in Chapter 49 or abused, neglected, or exploited as defined in Chapter 69 of Title 33 V.S.A. shall: as to children, make a report containing the information required by 33 V.S.A. §4914 to the Commissioner of the Department for Children and Families within 24 hours; or, as to a vulnerable adult, make a report containing the information required by 33 V.S.A. §6904 to the Division of Licensing and Protection at the Department of Disabilities, Aging, and Independent Living within 48 hours. Party will ensure that its agents or employees receive training on the reporting of abuse or neglect to children and abuse, neglect or exploitation of vulnerable adults.

9. Information Technology Systems:

Computing and Communication: Party shall select, in consultation with the Agency of Human Services' Information Technology unit, one of the approved methods for secure access to the State's systems and data, if required. Approved methods are based on the type of work performed by the Party as part of this agreement. Options include, but are not limited to:

1. Party's provision of certified computing equipment, peripherals and mobile devices, on a separate Party's network with separate internet access. The Agency of Human Services' accounts may or may not be provided.
2. State supplied and managed equipment and accounts to access state applications and data, including State issued active directory accounts and application specific accounts, which follow the National Institutes of Standards and Technology (NIST) security and the Health Insurance Portability & Accountability Act (HIPAA) standards.

Intellectual Property/Work Product Ownership: All data, technical information, materials first gathered, originated, developed, prepared, or obtained as a condition of this agreement and used in the performance of this agreement -- including, but not limited to all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and printouts, notes and memoranda, written procedures and documents, which are prepared for or obtained specifically for this agreement, or are a result

of the services required under this grant -- shall be considered "work for hire" and remain the property of the State of Vermont, regardless of the state of completion unless otherwise specified in this agreement. Such items shall be delivered to the State of Vermont upon 30-days notice by the State. With respect to software computer programs and / or source codes first developed for the State, all the work shall be considered "work for hire," i.e., the State, not the Party (or subcontractor or sub-grantee), shall have full and complete ownership of all software computer programs, documentation and/or source codes developed.

Party shall not sell or copyright a work product or item produced under this agreement without explicit permission from the State of Vermont.

If Party is operating a system or application on behalf of the State of Vermont, Party shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without prior authorization by the State. Nothing herein shall entitle the State to pre-existing Party's materials.

Party acknowledges and agrees that should this agreement be in support of the State's implementation of the Patient Protection and Affordable Care Act of 2010, Party is subject to the certain property rights provisions of the Code of Federal Regulations and a Grant from the Department of Health and Human Services, Centers for Medicare & Medicaid Services. Such agreement will be subject to, and incorporates here by reference, 45 CFR 74.36, 45 CFR 92.34 and 45 CFR 95.617 governing rights to intangible property.

Security and Data Transfers: Party shall comply with all applicable State and Agency of Human Services' policies and standards, especially those related to privacy and security. The State will advise the Party of any new policies, procedures, or protocols developed during the term of this agreement as they are issued and will work with the Party to implement any required.

Party will ensure the physical and data security associated with computer equipment, including desktops, notebooks, and other portable devices, used in connection with this Agreement. Party will also assure that any media or mechanism used to store or transfer data to or from the State includes industry standard security mechanisms such as continually up-to-date malware protection and encryption. Party will make every reasonable effort to ensure media or data files transferred to the State are virus and spyware free. At the conclusion of this agreement and after successful delivery of the data to the State, Party shall securely delete data (including archival backups) from Party's equipment that contains individually identifiable records, in accordance with standards adopted by the Agency of Human Services.

Party, in the event of a data breach, shall comply with the terms of Section 6 above.

10. Other Provisions:

Environmental Tobacco Smoke. Public Law 103-227 (also known as the Pro-Children Act of 1994) and Vermont's Act 135 (2014) (An act relating to smoking in lodging establishments, hospitals, and child care facilities, and on State lands) restrict the use of tobacco products in certain settings. Party shall ensure that no person is permitted: (i) to use tobacco products or tobacco substitutes as defined in 7 V.S.A. § 1001 on the premises, both indoor and outdoor, of any licensed child care center or afterschool program at any time; (ii) to use tobacco products or tobacco substitutes on the premises, both indoor and in any outdoor area designated for child care, health or day care services, kindergarten, pre-kindergarten, elementary, or secondary education or library services; and (iii) to use tobacco products or tobacco substitutes on the premises of a licensed or registered family child care home while children are present and in care. Party will

refrain from promoting the use of tobacco products for all clients and from making tobacco products available to minors.

Failure to comply with the provisions of the federal law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. The federal Pro-Children Act of 1994, however, does not apply to portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where Women, Infants, & Children (WIC) coupons are redeemed.

2-1-1 Database: If Party provides health or human services within Vermont, or if Party provides such services near the Vermont border readily accessible to residents of Vermont, Party shall adhere to the "Inclusion/Exclusion" policy of Vermont's United Way/Vermont 211 (Vermont 211), and will provide to Vermont 211 relevant descriptive information regarding its agency, programs and/or contact information as well as accurate and up to date information to its database as requested. The "Inclusion/Exclusion" policy can be found at www.vermont211.org.

Voter Registration: When designated by the Secretary of State, Party agrees to become a voter registration agency as defined by 17 V.S.A. §2103 (41), and to comply with the requirements of state and federal law pertaining to such agencies.

Drug Free Workplace Act: Party will assure a drug-free workplace in accordance with 45 CFR Part 76.

Lobbying: No federal funds under this agreement may be used to influence or attempt to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendments other than federal appropriated funds.

AHS ATT. F 12.31.16

APPENDIX I- REQUIRED FORMS
DEPARTMENT OF VERMONT HEALTH ACCESS
Request for Approval to Subcontract

Date of Request: _____ Amount of Subcontract: _____

Original Contractor Name:	_____	Contract #:	_____
Address:	_____		
Phone Number:	_____		
Contact Person:	_____		
Agreement #:	_____	Signature:	_____

Subcontractor Name: _____

Address: _____

Phone Number: _____

Contact Person: _____

Scope of Subcontracted Services: _____

Is any portion of the work being outsourced outside of the United States? **YES** **NO**
(Note to Business Office: If Yes, do not proceed further with approval until reviewed with Finance & Mgmt)

Dollar Amount of Subcontracted Services: \$ _____

Date Range for Subcontracted Services: Start: _____ End: _____

DVHA Contact Person:	_____	Signature:	_____
Phone Number:	_____		

Business Office Review

Comments: _____

Approval: _____ Title: _____ Date: _____

Required: Contractor cannot subcontract until they receive this signed approval from the State of Vermont. On the reverse side of this form there is language that must be included by the contractor in all subcontracting agreements.

Language to be included from State of Vermont Bulletin 3.5 in all subcontracting agreements:

Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of Title 21V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement. Party further agrees to include this provision in all subcontracts.

Set Off: The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

Taxes Due to the State:

- a. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- b. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- c. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.

Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

Child Support: (Applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date the Agreement is signed, he/she:

- a. is not under any obligation to pay child support; or
- b. is under such an obligation and is in good standing with respect to that obligation; or
- c. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of his Agreement or any portion thereof to any other Party without the prior written approval of the State. Party also agrees to include in subcontract or subgrant agreements a tax certification in accordance with the Taxes Due to the State paragraph above.

Notwithstanding the foregoing, the State agrees that the Party may assign this agreement, including all of the Party's rights and obligations hereunder, to any successor in interest to the Party arising out of the sale of or reorganization of the Party.